Supreme Court of the United States.

No. 66.—October Term, 1903.

John Arbuckle, William V. R. Smith, James N. Jarvie and William A. Jamison, Appellants, *vs.* Joseph E. Blackburn, Dairy and Food Commissioner of the State of Ohio. } Appeal from the United States Circuit Court of Appeals for the Sixth Circuit.

[December 7, 1903.]

This was a bill filed by Arbuckle Brothers against Joseph E. Blackburn, as Dairy and Food Commissioner of the State of Ohio, to restrain him from certain action on his part as such officer, including prosecutions for violation of pure food laws of the State.

After a jurisdictional clause setting forth diversity of citizenship, the bill averred that by an act of the general assembly of the State of Ohio, passed in the year 1884, entitled "An act to provide against the adulteration of food and drugs," as amended by an act passed in the year 1890, entitled "An act to amend section 3 of an act entitled 'An act to provide against the adulteration of food and drugs,' passed March 20, 1884," which act was still in full force and virtue, it was provided that no person should, within the State of Ohio, manufacture for sale, offer for sale, or sell any article of food which was adulterated within the meaning of said act, and that the term "food" used therein should include all articles used for food or drink by man, whether simple, mixed or compound. That it was further provided that food should be deemed adulterated "(1) If any substance or substances had been mixed with it, so as to lower or depreciate, or injuriously affect its quality, strength or purity; (2) If any inferior or cheaper substance or substances have been substituted wholly or in part for it; (3) If any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it; (4) If it is an imitation of, or is sold under the name of, another article; (5) If it consists wholly, or in part, of a diseased, decomposed, putrid, infected, tainted or rotten animal or vegetable substance or article, whether manufactured or not—or, in the case of milk, if it is the product of a diseased animal; (6) If it is colored, coated, polished or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is; (7) If it contains any added substance or ingredient which is poisonous or injurious to health; provided, that the provisions of this act shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food, if each and every package sold or offered

for sale be distinctly labeled as mixtures or compounds, with the name and per cent of each ingredient therein, and are not injurious to health."

The bill alleged that for more than thirty years complainants and their predecessors had been engaged, and still were, in the manufacture and sale throughout the United States, including the State of Ohio, a certain compound or mixture known as Ariosa, composed of roasted coffee compounded and mixed with eggs and sugar, whereby the separate beans were coated, and to a large extent hermetically sealed after roasting with a compound of sugar and eggs, the original strength and aroma of the coffee being thus preserved and deterioration prevented; that the coffee, eggs and sugar were each "a common, healthy and unobjectionable article of food;" that Ariosa had acquired great reputation, and the good will of the business of its manufacture and sale had become very valuable; that it was sold in Ohio in packages, each of which, in compliance with the laws of Ohio in respect to the adulteration of food, was distinctly labeled with a printed statement of the precise composition and the proportion of each of the ingredients of the article.

And it was charged that, notwithstanding these facts, defendant as dairy and food commissioner of Ohio had notified complainants that he considered Ariosa, as put up by them, an adulteration; that he had issued a circular letter to dealers and vendors wrongfully asserting that complainants in the manufacture and sale thereof refused to abide by the laws of Ohio in that behalf; and that he proposed to institute prosecutions to prevent and punish its sale or offer for sale in Ohio.

By the sixteenth paragraph of the bill it was averred that "said statute, construed as respondent claims it should be, is in conflict with the Fourteenth Amendment to the Constitution of the United States, and void, in that it would deprive complainants of their aforesaid property," and would deny them "equal protection of the law."

And by the seventeenth paragraph it was averred that Ariosa was shipped to and sold in Ohio in original packages, "and said statute, if construed as the respondent herein claims it should be, is a regulation by the said State of Ohio of interstate commerce, and is repugnant to, and in violation of, the third clause of section eight of article one of the Constitution of the United States, and void."

That if "respondent be permitted to commit the threatened wrongs, the same will, as complainants are informed and believe, damage complainants to the extent of more than $100,000, an amount largely in excess of respondent's ability to respond in judgment."

The prayer was that the commissioner be restrained from charging that Ariosa was an article of food adulterated within the meaning of the statute, and that the use of the process of coating and glazing the coffee with the preparation of sugar and eggs and the importation and sale

constituted violations of the statute; from threatening dealers with prosecution; and from instituting or commencing prosecutions.

The case came on to be heard on complainants' application for a preliminary injunction and was submitted on pleadings and evidence, whereupon the Circuit Court entered a decree denying the injunction and dismissing the bill, which decree was affirmed by the Circuit Court of Appeals, 113 Fed. Rep. 616, and the case then brought here by appeal.

Mr. Chief Justice FULLER delivered the opinion of the Court:

We are of opinion that this appeal must be dismissed, because the jurisdiction of the Circuit Court was "dependent entirely upon the opposite parties to the suit or controversy being citizens of different States," and the decree of the Circuit Court of Appeals was final. Act of March 3, 1891, 26 Stat. 816, c. 517, § 6.

The Circuit Courts have "original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, . . . or in which there shall be a controversy between citizens of different States, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid, . . ." Act of March 3, 1887, 24 Stat. 552, c. 373; Act of August 13, 1888, 25 Stat. 433, c. 866.

In the present case the Circuit Court had jurisdiction on the ground of diverse citizenship, but it is now contended that jurisdiction also rested on the ground that the suit was one arising under the Constitution of the United States.

The rule is firmly established that a suit does not so arise unless it really and substantially involves a dispute or controversy as to the effect or construction of the Constitution, upon the determination of which the result depends, and which appears on the record by a statement in legal and logical form such as is required in good pleading. *Defiance Water Company* v. *City of Defiance*, *ante*, p. —, and cases cited.

The averments of this bill did not bring the case within that rule for they put forward no existing controversy as to the effect or construction of the Constitution, on which the relief depended, and set up no right which might be defeated or sustained according to such construction.

By the laws of Ohio the office of Dairy and Food Commissioner was created, and it was made the duty of that officer to attend to the enforcement of all the laws against fraud and adulteration or impurities in food, drink, or drugs; to appoint assistant commissioners; and to employ such experts,

chemists, agents, inspectors and counsel as he might deem necessary for the proper enforcement of the laws; and it was also made his duty to inspect any articles made or offered for sale as articles of food or drink, and to prosecute, or cause to be prosecuted, any person or persons, firm or firms, corporation or corporations engaged in the manufacture or sale of any article of food or drink adulterated in violation of any laws of the State. 1 Bates' Ohio Statutes (1897,) p. 262, Tit. III, c. 18.

By the act of 1884, as amended in 1890, and set out in the bill, it was provided, among other things, that food should be deemed adulterated "if it is colored, coated, polished or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is." 2 Bates' Ohio Statutes (1897,) p. 2229, Tit. V. ch. A. The proviso excepted mixtures and compounds, recognized as ordinary articles of food, not injurious to health, and labeled as required.

It is not asserted that this police regulation is in contravention of the Constitution of the United States, but it is said that when the commissioner, in the discharge of his duty under the law, reached the conclusion that the coating of Ariosa with a glaze of sugar and eggs was calculated to conceal damage or inferiority, and to make the article appear better or of greater value than it really was, and that the article was not a compound or mixture, and proposed to prosecute, he thereby construed the act in a way, which, if his construction were correct, would render it unconstitutional.

But these were findings of fact which resulted in bringing the article within the prohibition and excluded it from the proviso, and neither findings nor prosecutions would in themselves constitute a deprivation of property, or a denial of the equal protection of the law, by the State, or any direct interference with interstate commerce, and the constitutionality of the statute was conceded.

The suggested controversy was purely hypothetical and based the supposed constitutional objections on the contingency that, on issues of fact, it might be judicially determined that Ariosa came within the statute, which complainants denied.

If the commissioner's conclusions were erroneous, the courts were open for the correction of the error, and the possibility that they might agree with the commissioner could not be laid hold of as tantamount to an actual controversy as to the effect of the Constitution, on the determination of which the result of the present suit depended. Indeed, in the only case called to our attention by counsel involving the status of Ariosa, the Court of Common Pleas of Lucas County, Ohio, held that it was not within the prohibition of the statute. *White* v. *Ohio*, 12 Ohio Nisi Prius Decisions, 659.

Reference to the Constitution to strengthen objections to a particular construction, or the pursuit of a certain course of conduct, is not sufficient

to invoke jurisdiction. Whatever grounds of equity interposition may have existed here, and we express no opinion on that subject, the jurisdiction of the Circuit Court as a court of the United States depended alone on diverse citizenship. If the allegation of that fact had been omitted from the bill, the jurisdiction could not have been maintained.

Appeal dismissed.

Mr. Justice DAY took no part in the disposition of the case.

True copy.

Test:

Clerk Supreme Court, U. S.